

March 16, 2004

The Honorable Gale Norton
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

I am writing to seek your response to a very troubling report issued today by the Interior Department's Inspector General (IG) regarding Deputy Secretary J. Steven Griles and the state of your Department's ethics program. This 145-page report, spurred in part by an April 7, 2003, request from me, paints a highly disturbing picture of repeated questionable conduct by the Department's second highest officer and those working for him. It also reveals a glaring failure of the Department to adequately police Mr. Griles' compliance with both general ethical requirements and specific agreements he made to refrain from taking official acts involving his former clients or the current clients of a firm from which he still derives income. According to the IG's transmittal letter, the Office of Government Ethics (OGE) suggests that some of Mr. Griles' actions may well have violated the law. But even with respect to those actions that do not on their own technically violate the ethics laws, the cumulative impact of repeated special access for those with pre-existing business connections to Mr. Griles – especially when combined with the apparent ethics violations – cannot help but leave a sour taste in the mouth of anyone who seeks to ensure that the American people have full faith in the fair functioning of their government.

Under governing regulations, it is now your responsibility to address this conduct and initiate any needed disciplinary or corrective action. I ask that you make your decision quickly and with an eye toward ensuring the American people's confidence in the integrity of your Department. I also urge that when you conduct your review, you not ignore the totality of the report's findings. The specific apparent ethics violations deserve your attention, but you must also address the repeated appearance of conflicts of interest and skirting of ethical standards – the avoidance of which is an integral part of the Federal government's basic obligations of public service.

The American people have every right to expect that those serving in government – especially those holding the highest positions of power and responsibility – make decisions and take actions based on the public interest, not their own financial interest or the financial interest of those close to them. Government service absolutely must not be used as a means for one's

friends and associates to reap financial rewards. That is why our ethics laws provide that a government official's decisions not be tainted by his or her own financial interest or the financial interests of recent clients or business associates. Adherence to these rules is critical to ensuring that high government officials not only avoid actual conflicts of interest, but also that they abstain from conduct that creates the appearance of conflicts. For even the repeated appearance of conflicts can undermine that which is essential for our Republic's well-functioning: the American people's confidence that government works fairly, impartially and in their interest.

As the IG's report shows, those dictates were being severely bent – and in some cases probably broken – by Mr. Griles and those working for him. Just as importantly, the report reveals that the Department's ethics program has so many flaws that it failed to either properly catch or prevent these or similar lapses from happening. The report deserves reading in full. What follows are some of its more troubling highlights.

- ***Using Government Position to Benefit Former Business Partner:*** Perhaps the most troubling part of the IG report involves a dinner party Mr. Griles convened for several of the Department's highest level officials and Mr. Griles' former business partner, Mark Himmelstein. In a highly unusual agreement, when Mr. Griles entered government service, Mr. Himmelstein agreed to essentially buy out Mr. Griles' share of the company by paying Mr. Griles \$284,000 each year for four years. Those payments will carry through 2005, giving Mr. Griles a financial interest in Mr. Himmelstein's firm until then and requiring his recusal on certain matters until 2007. Mr. Himmelstein continues to have work with and before the Department, and so an inside track to the Department's key officials could prove of enormous financial benefit to Mr. Himmelstein.

Shortly after taking office, Mr. Griles told a small group of the Department's Assistant Secretaries and Bureau Directors that he would like to have a "get-to-know-you" dinner party. As it turned out, the party – an intimate dinner for six officials – was held at Mr. Himmelstein's house, with Mr. Himmelstein being the only non-Department official in attendance. After the event, Mr. Griles' calendars were released under a Freedom of Information Act request. After that, an official in the Department's Solicitor's Office, Tim Elliott, went to Mr. Griles' special assistant and asked who had paid for the dinner. Mr. Elliot recalled the special assistant telling him that "if it's a problem, Steve will pay for it." Mr. Elliot told her that it would look better if Mr. Griles paid for the dinner. Mr. Griles wrote a check for \$180, dated approximately three weeks after the dinner, to Mr. Himmelstein. Interestingly, Mr. Himmelstein didn't cash the check until six months later, after a series of critical media articles and after the IG had started his investigation. Mr. Elliot also reports that he advised Mr. Griles'

special assistant that Mr. Griles should not attend two additional proposed dinner parties with Mr. Himmelstein and department officials who might be in the position of having to subsequently do business with him.

Aside from the extraordinarily poor judgment displayed by Mr. Griles, these events appear at odds with at least two ethics rules. To begin with, it is unclear whether Mr. Griles complied with the gift ban, which prohibits government officials from accepting gifts from a “prohibited source,” essentially someone doing business with or regulated by an agency.¹ But even more importantly, according to the IG’s transmittal letter, OGE still believes it to be an open question as to whether Mr. Griles may have used, or appeared to use, his official position for the private gain of his former business partner. Mr. Griles used his official office to bring someone who is still paying him close to \$300,000 a year together in a very small and intimate setting with some of the highest officials at DOI – officials who could be critical to the continued success of Mr. Himmelstein’s business. I urge that you review this very troubling matter in light of Mr. Griles’ agreement upon entering government service and all the facts and determine whether Mr. Griles violated ethics rules, what disciplinary actions should result from a finding of a violation, and whether this type of activity reflects well upon your Department and its integrity.

- ***Seeking to Influence EPA Action on Issue Affecting Former Clients and Current Clients of Former Business:*** Another disturbing incident recounted in the report involves Mr. Griles’ efforts to influence the Environmental Protection Agency’s comments on draft Environmental Impact Statements (EIS) assessing coal bed methane production in the Powder River Basin. Prior to entering the government, Mr. Griles had represented at least five companies with respect to their interest in increasing production in the basin. These companies’ applications for permits to drill are subject to environmental review prior to issuance – the purpose for which an EIS would be drafted. Despite the seeming conflict of involving himself in a matter affecting his previous clients, and after signing three recusal agreements, Mr. Griles wrote a memorandum to EPA Deputy Administrator Linda Fisher in April 2002 expressing concerns about a “deficiency” letter that EPA was about to issue, stating that the EIS contained insufficient information. He followed his letter up with a phone call.

¹ A “prohibited source” is any person seeking official action by the employee’s agency; doing business or seeking to do business with the agency; conducting activities regulated by the employee’s agency; has interests that may be substantially affected by performance or nonperformance of the employee’s official duties; or is an organization of such persons.

Interestingly, Mr. Himmelstein later wrote a letter to EPA expressing similar concerns about timing and need for cooperation. Although the Solicitor's Office had opined that there were no ethics violations, in at least two instances, the attorneys were not fully aware of Mr. Griles' client base. Mr. Griles' efforts to involve himself in a matter that would benefit his former clients and the current clients of his former employer, at a minimum, pose an extraordinary appearance problem, and may well have violated his recusal agreements. Indeed, according to the IG's transmittal letter, OGE believes that it is an open question whether Mr. Griles' actions violated ethics rules. Again, I urge that you review the report's findings on this matter and determine whether further action is warranted.

- ***Awarding of Unnecessary Contracts, through Non-Competitive Process, to Former Client of Mr. Griles:*** As the report makes clear, questionable conduct is not limited to Mr. Griles personally. The report recounts a sorry saga of a series of five contracts, totaling \$2 million, awarded to a company called Advanced Power Technologies, Inc. ("APTI") to conduct aerial imaging of certain grasslands in order to determine how susceptible they were to fire. Prior to entering government service, Mr. Griles had secured opportunities for APTI to provide briefings of its technology to the Bureau of Land Management, which resulted in the award of the first DOI contract for the company. The company received four additional contracts – and lots of special attention from Mr. Griles' staff – after Mr. Griles became Deputy Secretary. Although the report does not contain evidence that Mr. Griles personally helped the company once he took office – he was barred from such involvement – those working directly for him clearly did, with the result that APTI obtained a clear competitive advantage.

On one occasion, James Cason, the Associate Deputy Secretary and the person who had been designated to screen matters from which Mr. Griles had been recused, phoned procurement staff after receiving a call from APTI's lobbyist seeking additional contract opportunities. Mr. Cason directed procurement staff to "take care of it." The result: DOI awarded APTI another contract. On another occasion, Mr. Cason convened an extraordinary meeting in Mr. Griles' conference room in which Mr. Cason had a number of senior DOI officials and managers sit for a briefing from APTI on APTI's technology. One career DOI employee in attendance reported that he felt uncomfortable with the location of the presentation in Mr. Griles' conference room and because he had been informed that the Deputy Secretary's office required his attendance at the meeting. He was surprised to learn, upon his arrival, that a commercial vendor was providing a product briefing. He stated that as a career civil servant, he had never before experienced a similar situation. Mr. Griles' staff's actions here are

in stark contrast to those of at least one other Department staffer, who immediately saw the problems inherent in Mr. Griles' staff's actions. When Mr. Griles' special assistant wrote a note to your Chief of Staff asking for a point of contact for APTI within the Bureau of Indian Affairs, your Chief of Staff advised her that this request was inappropriate due to Mr. Griles' recusal, and he did not respond to her request.

In any event, the potential procurement violations cited in the report are manifold: according to the report, the contracts were often for work in which DOI hadn't initially expressed interest, the work was sometimes of dubious value to the Department (and resulted in the deferral of higher priority work), the procurement process was often rushed, DOI informed APTI in advance of the DOI's budget for the contract, and APTI assisted DOI in writing Statements of Work for the contracts that contained requirements that only APTI could perform, thus effectively prohibiting contracts from being competitively bid. Indeed, one official described one of the contracts as having been "pushed" on them. I urge you to review this matter and take any appropriate action against any involved who did not act in the Department's interest or in compliance with its rules or regulations.

- ***Many Other Meetings with Former Clients or Clients of Former Business:*** The report describes numerous other meetings between Mr. Griles and his former clients and the clients of his former business. Although the Office of Government Ethics has apparently concluded that these meetings did not fall afoul of the ethics rules, the cumulative impact of so many contacts between Mr. Griles and those who have interests he was previously paid to pursue cannot help but raise serious questions about the integrity of the Department's decision-making process. Again, the American people must have confidence that the merits of a matter, not the access of its proponents, are what determines the Department's positions – especially on issues of such importance as the use and abuse of our precious natural resources. When our nation's citizens see so many and so frequent contacts between a person of such power as Mr. Griles and those from whom he received – or continues to receive -- financial recompense, it is hard not to question whose interest is being served. I therefore urge that you consider whether your Department should adopt some reasonable limits on Department officials to ensure that the Department both is acting and is perceived to be acting in the public's interest.

Finally, the report makes some stinging statements about the state of the Department's ethics program. In essence, it describes a program that is weak, underfunded, understaffed and under functioning. It leaves little doubt as to why so many of the substantive lapses described

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in the report were able to occur and recur. The report makes a number of specific recommendations for addressing these longstanding problems. I urge you to implement appropriate corrective action.

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Ensuring that our government makes – and appears to make – its decisions based on the public's interest alone is one of the most critical responsibilities agency heads have. As the IG concluded in his transmittal letter to you:

[T]he American public is not equipped to conduct the kind of tortured analysis necessary to come to a sound legal conclusion in matters like this. Whether a violation occurred or not may ultimately be irrelevant. Mere appearances, however, will erode the public trust. Once eroded, that trust is difficult – if not impossible – to win back. This is only one in a series of cases in which we have observed an institutional failure to consider the appearance of a particular course of conduct on the part of Departmental employees and officials. It is my hope, however, that this may be the case that changes the ethical culture in the Department.

I ask that you review the IG's very important report and advise me what response you plan to take with respect to each of its findings and recommendations and to the facts reported therein. I look forward to your response.

Sincerely yours,

Joseph I. Lieberman
Ranking Minority Member